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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

TERESA ARASHEBEN,

Defendant and Appellant.

B285036

(Los Angeles County
Super. Ct. No. LA082206)

APPEAL from the judgment of the Superior Court of Los Angeles County. Martin L. Herscovitz, Judge. Affirmed.

Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant and appellant Teresa Arasheben appeals from her conviction by jury of one count of petty theft with a prior theft-related conviction. She contends the trial court erred in finding she was competent to stand trial, thus violating her constitutional rights to due process and a fair trial. Defendant also challenges the trial court's failure to order a second competency hearing based on her conduct during trial.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 12, 2015, defendant was observed taking various items from a Sephora store in Canoga Park—conduct which was also captured on video surveillance cameras. Defendant was detained by the store's loss prevention agent after she left the premises without paying for the items she had concealed in her clothes and in her purse. Defendant complied with the agent's request to return to the store. Local police were contacted and defendant was arrested.

Defendant was charged by amended information with one count of petty theft with a prior theft-related conviction (Pen. Code, § 484, subd. (a), § 490.2, § 666). The information also alleged defendant committed the offense while released on bail or her own recognizance within the meaning of section 12022.1, subdivision (b). It was further alleged defendant had suffered five prior felony convictions within the meaning of section 1203, subdivision (e)(4), as well as two prior serious or violent felony convictions (solicitation to commit murder and assault with a deadly weapon).

Defendant pled not guilty. After defendant waived her right to a preliminary hearing, the court granted defense

counsel's request to be relieved. On October 11, 2016, Elliott Tiomkin, a bar panel attorney, was appointed as her new counsel.

In March 2017, defendant made a request pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to relieve Mr. Tiomkin as her attorney and obtain substitute counsel. During a closed hearing, defendant made vague accusations that Mr. Tiomkin was threatening and harassing her. Mr. Tiomkin denied defendant's accusations and explained that it was defendant who had threatened him repeatedly about making a complaint to the State Bar. Mr. Tiomkin nevertheless said he did not feel he had a conflict and was willing to continue to represent her. He explained based on the investigation, the case was fairly straightforward and he had discussed it numerous times with defendant. The court denied defendant's motion.

When the proceedings resumed in open court, defense counsel stated he was ready for trial but that based on defendant's behavior, he was declaring a doubt as to her competence pursuant to Penal Code section 1368. Defendant interjected and asserted that counsel was only "attempting to silence" her and "wrongfully cover up" his mistreatment of her.

The court stated: "Based on the defendant's behavior right now and during the *Marsden* motion, the court finds defendant obviously has expressed some, as a layperson would say, paranoid behavior, and it has affected her ability to communicate with her attorney, which could affect his ability to represent her." Based thereon, the court stated it had a doubt as to defendant's competency and suspended the proceedings. The court appointed Dr. Kory Knapke, a forensic psychiatrist, and Dr. Catherine Scarf, a forensic psychologist, to examine defendant.

Defendant filed, on her own behalf, a “motion to disqualify” the court. The court responded with a sworn answer denying any basis for disqualification, explaining that defendant was represented by counsel and issuing an order striking defendant’s motion.

On March 11 and 13, 2017, defendant was evaluated by Dr. Scarf and Dr. Knapke, respectively.

Dr. Knapke concluded that defendant was competent to stand trial. He reviewed defendant’s criminal history dating back to the 1980’s and stated she had twice been found incompetent to stand trial. The first time was in 1993 and she was hospitalized until 1995. The second time was in May 2001, but she was “quickly discharged” in less than two weeks. Dr. Knapke noted he had not been provided any of defendant’s mental health records. Dr. Knapke opined that defendant “presented herself extremely well” during his examination of her “and was able to eloquently discuss her legal predicament in great detail.” He further stated that in his opinion defendant “clearly has the capacity to rationally cooperate and assist her attorney at this time.” Dr. Knapke noted however that defendant does exhibit signs of “Cluster B personality features” as reflected by her history of “unstable interpersonal relationships.” He believed she would benefit from individual therapy.

Dr. Scarf also opined that defendant was competent to stand trial. Dr. Scarf interviewed defendant in her office and administered a series of standardized tests.

On April 3, 2017, the court held a hearing pursuant to Penal Code section 1368. The expert reports of Drs. Scarf and Knapke were received into evidence. The parties submitted on the reports and did not offer any additional evidence. Based on

the stipulation of counsel, the two expert doctors were deemed to have been called, sworn and testified to the contents of their respective reports. The court stated on the record that, after reviewing and considering the two reports, it found “defendant [was] competent to stand trial.” The court’s written order provided that “defendant is presently mentally competent to stand trial within the meaning of Penal Code section 1368 and [she] is able to understand the nature of the proceedings taken against [her] and is able to assist counsel in the conduct of a defense in a rational manner. Criminal proceedings resumed.”

After the court’s finding of competence, defendant advised the court she wished to make another *Marsden* motion with respect to Mr. Tiomkin. The court conducted another closed hearing and allowed defendant to state her concerns about Mr. Tiomkin’s allegedly improper behavior and deficient representation. Defendant had filed paperwork on her own in another court seeking a restraining order against Mr. Tiomkin. The court continued the hearing on defendant’s *Marsden* motion to obtain a transcript of those proceedings.

On April 12, 2017, the *Marsden* hearing was resumed. Mr. Tiomkin acknowledged that defendant was attempting to have a restraining order imposed against him, but stated that defendant was simply trying to create a conflict and that he was willing to continue the representation. The court found the attorney-client relationship had broken down and therefore granted defendant’s motion and relieved Mr. Tiomkin.

On April 25, 2017, Darold Shirwo, a bar panel attorney, was appointed as defendant’s new trial counsel.

At the pretrial conference, the court denied defendant’s motion to dismiss and her motion to reduce the petty theft charge

to a misdemeanor. The court granted defendant's request pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 to strike her qualifying strike prior in case number LA007114 (solicitation to commit murder).

In June 2017, Mr. Shirwo filed a motion to be relieved as counsel. In a closed hearing, Mr. Shirwo explained that he was prepared for trial, but that he was unable to effectively communicate with defendant. Defendant claimed it was counsel who was not communicating with her. She said her phone calls to Mr. Shirwo were never returned and that she would not get fair representation at trial if he did not speak with her.

The court denied the motion, stating "I've seen and viewed [defendant] in this case now going through two attorneys The same thing has happened over and over again. [¶] If I were to relieve you and appoint yet a fourth attorney in this case, there's no question in my mind that this would happen again because the problem is not with you [or the prior attorneys]. The problem, as I see it, is with [defendant]. [¶] The fact that she's choosing not to communicate with you effectively has nothing to do with your representation." The court reasoned that appointed attorneys often must deal with difficult clients and that it appeared Mr. Shirwo was handling the case competently. The court further stated defendant was "an extremely difficult person" and her behavior was "merely a delay tactic and a tactic to attempt to create a conflict of interest where no actual conflict of interest exists other than the defendant's recalcitrant and defiant view of this case and the judicial process."

On August 3, 2017, defendant announced in court that she was not receiving adequate representation, so the court held yet another closed hearing. Mr. Shirwo explained that the case was

simple and he was therefore ready to proceed, but he had recently tried to limit his communications with defendant to emails and face-to-face communications that could be documented.

Defendant had filed a complaint against him with the State Bar, and he had been advised to handle his communications accordingly, to the extent possible. The court denied defendant's request to relieve Mr. Shirwo, finding that defendant had created the situation based on her desire to "avoid trial at all cost." "Mr. Shirwo has done an excellent job He's on top of this case."

On August 15, 2017, two days before trial, defendant again claimed she had had no contact with Mr. Shirwo and was not prepared to go to trial. In a closed hearing, defendant claimed to have unanswered questions that Mr. Shirwo had refused to answer, but when queried by the court, she would not identify any specific unanswered question, asserting she would not discuss that with the judge who was hearing her case. The court again denied defendant's motion.

The case proceeded to a jury trial. Defendant exercised her right not to testify and did not present any witnesses. Shortly before the close of evidence, defendant reported to the court she had witnessed juror misconduct. She presented her cell phone to the court and pointed out a photograph she took of one of the jurors having lunch with a deputy. The court questioned the juror who conceded he had lunch with a friend who happened to be a deputy at the courthouse. The court confirmed that the deputy had not been involved in his courtroom during the trial and concluded there was no showing of juror misconduct or prejudice to defendant.

The jury found defendant guilty of petty theft, and also found true the qualifying priors.

Defendant's motion for a new trial and renewed motion to reduce the charge to a misdemeanor were denied. The court granted defendant's request to strike the Penal Code section 12022.1 bail allegation. The court sentenced defendant to an upper term of three years, awarded defendant 48 days of custody credits and imposed various fines and assessments.

This appeal followed.

DISCUSSION

"The United States Supreme Court has 'repeatedly and consistently recognized that "the criminal trial of an incompetent defendant violates due process."' [Citation.] A defendant is deemed incompetent to stand trial if he [or she] lacks " 'sufficient present ability to consult with his [or her] lawyer with a reasonable degree of rational understanding . . . [or] a rational as well as factual understanding of the proceedings against him [or her].' " " (*People v. Lightsey* (2012) 54 Cal.4th 668, 690.) State law is in accord. (See, e.g., *People v. Mickel* (2016) 2 Cal.5th 181, 194-195 & Pen. Code, § 1367, subd. (a) [a "person cannot be tried or adjudged to punishment . . . while that person is mentally incompetent. A defendant is mentally incompetent . . . if, . . . the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner"].)

Defendant contends the trial court violated her rights to due process and a fair trial by erroneously concluding she was competent to stand trial.

We disagree. In reviewing a finding of competency, we are governed by the substantial evidence test. (*People v. Marshall*

(1997) 15 Cal.4th 1, 31 (*Marshall*).) “Evidence is substantial if it is reasonable, credible, and of solid value.” (*Ibid.*) Even a cursory review of the record here reveals substantial evidence supporting the court’s finding.

A defendant is presumed competent, unless the contrary is established by a preponderance of the evidence. (*People v. Campbell* (1976) 63 Cal.App.3d 599, 608; see also Pen. Code, § 1369, subd. (f) [“It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent.”].)

Both of the experts appointed by the court to examine defendant concluded she was competent to proceed to trial and assist in her defense. Defendant did not offer any evidence to rebut the doctors’ opinions. The uncontradicted reports supported the presumption of competence and defendant points to no evidence undermining those conclusions.

Rather, defendant argues the reports lack credibility because the doctors were not provided information pertaining to her prior mental health history—an objection she failed to raise in the trial court.

In any event, the contention is not well-taken. While neither doctor had access to defendant’s prior mental health records, Dr. Knapke was aware defendant had, in the past, been found incompetent to stand trial. He noted that both of those findings occurred years earlier (1993 and 2001) and he factored those findings into his assessment of defendant’s *current* mental health status, pointing out the 2001 incident resulted in only two weeks of hospitalization. Dr. Knapke also noted that defendant had numerous other criminal adjudications in which she had been competent to proceed. Both doctors interviewed defendant

and administered various tests which indicated that defendant plainly understood the nature of the criminal proceedings she faced and had the capacity to communicate with and assist her appointed counsel.

The record contains substantial, credible evidence supporting the court's finding that defendant understood the nature of the criminal proceedings and was able to participate in her defense. Defendant's argument amounts to nothing more than a request for us to reweigh the evidence presented to the trial court.

Moreover, the record does not support defendant's contention the court erred in failing to hold a second competency hearing prior to sentencing. "[W]hen a competency hearing has already been held and the defendant has been found competent to stand trial . . . a trial court need not suspend proceedings to conduct a second competency hearing unless it "is presented with a substantial change of circumstances or with new evidence" casting a serious doubt on the validity of that finding.'" (*People v. Mendoza* (2016) 62 Cal.4th 856, 884.) "[T]he trial court may appropriately take its personal observations into account in determining whether there has been some significant change in the defendant's mental state.'" (*Id.* at p. 885.)

Defendant contends the record demonstrates she was acting in a manner that warranted a second competency hearing. A similar argument was raised and rejected in *People v. Hightower* (1996) 41 Cal.App.4th 1108. The defendant there engaged in "disruptive behavior in the courtroom" and regular "disputes with defense counsel." (*Id.* at p. 1112.) *Hightower* explained that "[t]he test, in a [Penal Code] section 1368 proceeding, is competency to cooperate, not cooperation.'" (*Ibid.*)

The trial court here concluded defendant's obstreperous behavior and repeated *Marsden* motions were an intentional attempt to delay trial, and an unwillingness to cooperate with her appointed counsel, but not mental incompetence. "A trial court's decision whether or not to hold a competence hearing is entitled to deference, because the court has the opportunity to observe the defendant during trial." (*People v. Rogers* (2006) 39 Cal.4th 826, 847; accord, *Marshall, supra*, 15 Cal.4th at p. 33.)

Defendant points to no evidence indicating a "substantial change of circumstances" or "new evidence" casting doubt on the court's competency finding. Her uncooperative behavior did not rebut the presumption of competence to stand trial. We find no abuse of discretion in the court's failure to convene a second competency hearing.

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, Acting P. J.

WE CONCUR:

WILEY, J.

ADAMS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.